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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,676

12/20/2005

John Stephenson

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EXAMINER

DEMERE, CHRISTOPHER R

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,676	<b>Applicant(s)</b> STEPHENSON, JOHN	
	<b>Examiner</b> CHRISTOPHER DEMEREE	<b>Art Unit</b> 3782	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 49-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 61 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 61 defines the collar as being made of a molded polymer. Examiner cannot find support for this claim in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 49-53, 56 and 58-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Muise et al. (US 6637623 B2; hereinafter Muise).

Regarding claims 49, 50, 52 and 53, Muise teaches a bag-in-box shipping container comprising an outer carton (2) having a first wall and an adjacent wall (6), a carton opening (8) extending through the first wall and the adjacent wall, the outer

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carton defining a carton cavity; a bag (24) positioned within the carton cavity of the outer carton, the bag having a neck with an opening providing ingress into the bag; and a collar (28) having a tray (34), a rim (32) up-stand extending upwardly from the tray and a peripheral flange (30) extending outwardly about the rim up-stand at an upper end of the rim up-stand opposite the tray, the tray further including a collar opening (36) extending there through, wherein the collar is attachable to the outer carton through insertion of the tray and the rim up-stand into the carton opening to, in turn, be positioned within the carton cavity (see Fig. 1), wherein the peripheral flange cooperates with the outside of the outer box carton about the carton opening to engage the outer carton and to preclude passage of the entirety of the collar into the carton cavity through the carton opening (see Fig. 2), and wherein the neck of the bag is coupled to the collar opening so as to be surrounded by the tray of the collar, and so as to extend into a collar cavity defined by the tray and the rim up-stand of the collar (see Fig. 2).

Regarding claim 51, Muise teaches a bag-in-box shipping container wherein the rim up-stand comprises a substantially "c" shaped component. Examiner considers the "up-stand" portion (32) of the collar (28) to be substantially a "c" shape in that it forms a "u" shape in the collar, and examiner considers a "c" shape and "u" shape substantially similar.

Regarding claim 56, Muise teaches a bag-in-box shipping container further comprising a bag neck location panel (12) formed from a portion of the first wall and the adjacent wall corresponding to the carton opening the bag neck location panel defining

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the location of the collar so that upon insertion the collar abuts the bag neck location panel.

Regarding claim 58, Muise teaches a bag-in-box shipping container wherein the collar further includes a lid (76) extending about the rim up-stand to, in turn, cover the cavity defined by the tray and the rim up-stand, and to preclude ingress to the neck of the bag positioned within the cavity. Examiner considers tabs 76 to be a lid insofar as they cover a space inside the container.

Regarding claim 59, Muise teaches a bag-in-box shipping container wherein the lid further includes a frangible tamper evident seal (14) which evidences removal or displacement of the lid relative to the tray.

Regarding claim 60, Muise teaches a bag-in-box shipping container wherein the collar further includes a handle member (18) coupled thereto, the handle member structurally configured to facilitate lifting of the bag-in-box.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 54, 55, 57 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muise in view of Speas (US 3599840 A).

Regarding claims 54, 55 and 57, Muise teaches everything except a front lip extending from the tray. Speas teaches a device for positioning a bag liner in an outer

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container comprising a lip (16a) that extends out over the front edge of the tray (16). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Muise's container to include a front lip in addition to the rim up-stands in order to anchor the spout within the outer container (Speas; Col 1 lines 66-72). Examiner notes that the rim up-stands (Muise; 32) extend to the sides of the tray, while Speas' front lip extends to the front of the tray.

Regarding claim 61, Muise teaches everything except a molded polymer member. Speas teaches a collar element comprising a main sheet formed of a semi-rigid plastic material (Col 2 lines 49-51). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Muise's container to be made of a molded polymer in order to create adequate strength surrounding the pouring spout, as taught by Speas.

8. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muise in view of Andrews, SR. et al. (US 2002/0047040 A1; hereinafter Andrews).

Regarding claim 62, Muise teaches everything the bag-in-box container presented in a collapsed state. Andrews teaches a beverage container folded into a collapsed state in order to stack several containers on top of one another for storage (see Fig. 6). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Muise's container to be collapsible in order to save space convenient for storage, as taught by Andrews.

***Response to Arguments***

9. Applicant's arguments, see Pages 6-8, filed 12/22/2008, with respect to the rejection(s) of claim(s) 29-36, 38, 40 and 41 under USC 102(b) in view of Moorman have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Muise.

10. Applicant's arguments with respect to claims 49-62 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782